S.B. Civil Writ Petition No.6346/05

Gopal Singh

Vs.

Central Govt. Industrial Tribunal & Labour Court & Anr.

Date of Order : 20/04/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Yogesh Kumar Sharma, for petitioner
Mr. R.K. Kala, for respondent No.2

This matter has come up on application filed under Article 226(3) of the Constitution for vacation of ex-parte stay order passed by this court dt.11th August, 2005.

With the consent of parties, the writ petition is finally heard and decided at this stage.

Instant petition has been filed against the order dt.29th July, 2005 [Ann.2] whereby the Central Government Industrial Tribunal set aside the application filed by the petitioner-workman dt.26th July, 2005 for recalling the order dt.18th July, 2005, whereby his evidence was closed for effective adjudication of the dispute which was referred by the appropriate government for adjudication in terms of reference order dt.25th August, 2004.

Facts in brief for adjudication of the dispute, are

that the petitioner-workman, as alleged, was serving in the institution of respondent in the cadre of Class IV and was removed from service vide order dt.16th October, 2001. Against which, he raised the dispute by submitting application before the conciliation officer and after furnishing failure report, the appropriate government made a reference for adjudication before the competent Tribunal in terms of notification dt.25th August, 2004. The petitioner-workman submitted statement of claim and written statement was also filed by the respondent and thereafter, rejoinder was submitted by the petitioner on 29th April, 2005 and in support of his claim application, he submitted his own affidavit on 3rd June, 2005 and thereafter, the matter was fixed for his evidence on 18th July, 2005, but because he is residing at Jodhpur and he was to appear before the Tribunal at Jaipur, he could not put his appearance on the date fixed by the Tribunal i.e. 18th July, 2005, his evidence was closed and the matter was posted for hearing on 26th July, 2005.

On 26th July, 2005, the petitioner submitted application for recalling of the order and pointed out his justification for which he could not put his personal appearance for his evidence on 18th July, 2005.

The Tribunal taking note of previous dates on which the petitioner failed to appear and taking note of

opportunity afforded to him, finally considered that it is not a fit case for granting any further opportunity, consequently, rejected his application vide order Ann.2 dt.29th July, 2005. Hence, this petition.

Counsel for petitioner contends that earlier dates on which the case was fixed of which reference has been made by the Tribunal in its order impugned, clearly shows that on two occasions i.e. 30th March, 2005 and 19th April, 2005, he was called upon to submit his rejoinder and so also affidavit, if so required. Accordingly, on 29th July, 2005, he submitted his rejoinder and on 3rd June, 2005 affidavit of the workman was submitted and thereafter, the matter was fixed on 18th July, 2005. Because of his persons reasons, as he is residing at Jodhpur and fell ill on that day, he could not put his appearance, as such the learned Tribunal has committed an error in not affording opportunity to adduce his evidence. In support of his claim and the dates which has been referred to, which has been considered as opportunity afforded to him was not related to his evidence for the reason that the affidavit itself was submitted on 3rd June, 2005 with the permission of the Tribunal and thereafter the case was fixed for evidence on 18th July, 2005, as such he has been denied a reasonable opportunity and the order impugned requires interference by this court.

Counsel for respondent filed reply to the writ petition and supported the finding recorded by the Tribunal in the order impugned dt.29th July, 2005. Shri Kala, counsel for respondent, submits that from bare perusal of order-sheet of the matter, which has been placed on record as Ann.R2/1, it shows that on various dates the petitioner was called upon, but for one or other reason, he has failed to appear, as such no error has been committed by the Tribunal. Shri Kala further submits that the order impugned is an interim order against which the present petition is not maintainable and in support of his contention counsel has placed reliance on the judgment of this court in **M/s. Joint Media Vs. Smt. Amana Khatoon [2005 WLC [Raj.] UC-422**.

Counsel for respondent further submits that since the petitioner-workman failed to produce his evidence on 18th July, 2005 and which was closed as such they have also submitted orally not to produce any evidence and if the permission is granted to the workman to produce evidence they may also be permitted to lead evidence before the Tribunal which is not opposed even by the counsel for petitioner.

I have considered the submissions of the counsel and perused the material on record.

This fact remain undisputed that after the reference was made by the appropriate government in terms of its order dt.25th August, 2004 statement of claim, written statement, rejoinder and affidavit has submitted on 3rd June, 2005 which is also evident from order-sheet of 3rd June, 2005 placed by the respondent on record as Ann.R2/1 and thereafter, the matter was fixed for evidence of the workman on 18th July, 2005. Since he failed to appear on the said date, his evidence was closed and matter was posted for hearing on 26th July, 2005. On the first date fixed after closing of his evidence the petitioner submitted application for recalling of the said order. This fact cannot be ruled out that the workman who is member of Class IV and residing at Jodhpur and his services were dispensed with way back on 16th October, 2001 is out of employment and proceedings are pending before the Tribunal at Jaipur, certainly it will be inconvenient for him to prosecute the matter looking to financial hardship.

Rule 10-B(8) of the Industrial Disputes [Central] Rules, 1957 even provides an opportunity to the either of party to adduce evidence and for good reasons referred to in the application is competent to extent further time for producing evidence and the object behind is that matters coming before the Tribunal be

disposed of expeditiously without any loss of time and if the matter is deferred it will certainly cause injustice to either of parties to the dispute but the finding recorded by the Tribunal of taking shelter of Rule 10-B(8) of the Rules is no more applicable in the facts of instant case.

So far as submission made by the counsel for respondent with regard to interim order and placing reliance on the judgment in **M/s. Joint Media Vs. Smt. Amana Khatoon [supra]**, is concerned, in my opinion, is not applicable and is of no assistance for the reason that in view of evidence of the workman being closed, he will be deprived to substantiate his claim before the Tribunal and there is no appeal provided under the Act of 1947 and order has attained finality for all practical purposes. So far as the judgment [supra] is concerned, there was a provision of appeal provided to the plaintiff and certainly, he should have raised all his pleas even for closing his evidence at appellate stage which opportunity is not available to the petitioner in the instant matter.

Accordingly, the writ petition stands allowed. The order dt.29th July, 2005 is hereby quashed and set aside and the petitioner-workman is granted opportunity to adduce his evidence before the Tribunal on the date already fixed by the Tribunal and the respondents will

also be free to adduce their evidence thereafter and the Tribunal may proceed further in the matter and decide the reference in accordance with law. No Costs.

FRB [Ajay Rastogi],J.